

REMARKS

In the office action, the Examiner rejected claims 1-14, 24, and 26-29 under 35 U.S.C. § 103(a) as being unpatentable over Yamamoto (U.S. Patent No. 5,499,842) in view of Sugiyama (U.S. Patent No. 5,685,560). The Examiner also rejected claims 2, 15, and 25 under 35 U.S.C. § 103(a) as being unpatentable over Yamamoto in view of Sugiyama and Rheinlander (U.S. Patent No. 5,863,064). The status of claims 16-23 is unclear.

I. Rejection of Claims 1-14, 24, and 26-29

As stated, claims 1-14, 24, and 26-29 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamamoto in view of Sugiyama. Office Action, p. 2. The Examiner asserts that Yamamoto discloses a face portion 11/12 and a seam 15 in the face portion. The Examiner further asserts that Sugiyama shows, in Figs. 8-9, a nonlinear seam having a plurality of bends in a membrane switch. The Examiner further asserts that a nonlinear seam in the membrane switch of Sugiyama may be combined with the face portion 11/12 and seam 15 of Yamamoto to produce the Applicant's invention.

A. A Prima Facie Case of Obviousness Has Not Been Made Because Sugiyama Does Not Teach a Nonlinear Seam, but, Instead, Teaches a Nonlinear Gap

Applicant respectfully submits that the Examiner has not made a *prima facie* case of obviousness. It is well settled that the PTO has the burden to establish a *prima facie* case of obviousness. *In re Glaug*, 2002 U.S. App. Lexis 4246, *4 (Fed. Cir. March 15, 2002); *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Fine*, 837 F.2d, 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); MPEP § 2142.

“To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” MPEP § 2143.03.

Sugiyama does not disclose a nonlinear seam in Figure 8 or elsewhere. Instead, the nonlinear pattern in Figure 8 referred to by the Examiner is a nonlinear gap between two separate and distinct membrane type switch halves 56, 58 that are not connected together by a seam. Instead of being attached to each other, the membrane type switch halves 56, 58 are held in place by attachment to an airbag inner cover 312, which is underneath the membrane type switch halves 56, 58 shown in Figure 8. Col. 6, lines 48-51. More specifically, the “first and second membrane type switch halves 56 and 58 are attached by a suitable method such as a bonding agent, adhesive tape, and the like to the airbag projection area 314” of the airbag inner cover 312. Col. 6, lines 48-51.

The membrane switch type halves 56, 58 of Sugiyama are used to close an electrical circuit to activate a vehicle's horn. Col. 5, lines 20-26. The construction of each of these separate membrane type halves 56, 58 is illustrated in Figure 3. The membrane halves are not connected together by a seam. Instead, the halves 56, 58 may be held in place by mounting posts 64 disposed in throughholes 66 on the halves 56, 58, not a seam, as illustrated in Figure 7, or by attachment to the airbag inner cover 312, as shown in Figure 8. Col. 6, lines 19-23 and 48-51. Sugiyama simply does not teach that a seam connects the nonlinear edges of the halves 56, 58.

The nonlinear gap of Sugiyama is not to be confused with the easy-to-break line 316 in the airbag inner cover 312 as shown in Figure 8, which cover 312 is separate and distinct from the two membrane halves 56, 58. Col. 6, lines 39-40. The easy-to-break line 316 of the airbag inner cover 312 is similar to the easy-to-break line 38 of the

flexible airbag module cover 22, which is illustrated in another embodiment shown in Figure 2. Col. 6, lines 40-44. Again, neither of the easy-to-break lines 38, 316 are to be confused with the gap between the membrane type switch halves 56, 58. Additionally, as will be discussed below, Sugiyama's use of the term "line" in the phrase easy-to-break line 38, 316 teaches away from a nonlinear seam.

The Examiner suggests that Figure 9 in Sugiyama teaches a nonlinear seam having a plurality of bends. Office Action, p. 2. However, Figs. 9A-E are "sections of modified inner covers." Col. 2, line 13. As stated in the specification:

The airbag inner cover 312 can be provided with projections configured as illustrated in FIGS. 9A, 9B, 9C, 9D, or 9E, on an outer surface thereof to which the first and second membrane type switch halves 56 and 58 are attached.

Col. 7, lines 5-8. Therefore, Figs. 9A-D do not illustrate the gap between the membrane type switch halves 56, 58.

In sum, Sugiyama does not teach a nonlinear seam. Instead, Sugiyama illustrates a nonlinear gap between two separate and distinct membrane type switch halves 56, 58. Therefore, Yamamoto and Sugiyama cannot be combined to teach a nonlinear seam on the face of a cover for an airbag.

B. There Is No Motivation to Combine Sugiyama and Yamamoto Because a Nonlinear Gap in the Face Portion of a Cover Would Destroy the Functionality of the Cover

References cannot be combined to establish obviousness where a reference will be rendered inoperable by incorporating the specified attribute of the second reference. *McGinley v. Franklin Sports*, 60 USPQ2d 1001, 1010, (Fed. Cir. 2001); *In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984). More particularly, if "references taken in combination would produce a seemingly inoperative device, we have held that such

references teach away from the combination and thus cannot serve as predicates for a prima facie case of obviousness.” *Id.*

The purpose of the cover 10 in Yamamoto is to protect a safety restraint device. Replacing a seam 15 on the face portion 11/12 of the cover with a nonlinear gap from Sugiyama will thwart the purpose of the cover 10. A gap in the cover would allow foreign objects to bypass the cover 10 and potentially damage the safety restraint device. Additionally, gaps in the cover 10 may allow the cover 10 to fall off or separate from the safety restraint device that the cover is designed to protect. In sum, a gap, whether linear or nonlinear, would render the cover 10 inoperable.

C. Neither Yamamoto nor Sugiyama Contain a Suggestion to Combine the Nonlinear Gap of Sugiyama with the Cover of Yamamoto.

A prima facie case of obviousness is not established unless the prior art would have suggested to one of ordinary skill in the art to modify the prior art in order to arrive at the claimed invention. *In re Dow Chemical*, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

The genius of invention is often a combination of known elements which in hindsight seems preordained. To prevent hindsight invalidation of patent claims, the law requires some "teaching, suggestion or reason" to combine cited references. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579, 42 U.S.P.Q.2D (BNA) 1378, 1383 (Fed. Cir. 1997). When the art in question is relatively simple, as is the case here, the opportunity to judge by hindsight is particularly tempting. Consequently, the tests of whether to combine references need to be applied rigorously. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d (BNA) 1614, 1617 (Fed. Cir. 1999), limited on other grounds by *In re Gartside*, 203 F.3d 1305, 53 U.S.P.Q.2D (BNA) 1769 (2000) (guarding against falling victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher).

McGinley v. Franklin Sports, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001). A proper rejection based on obviousness adequately identifies and explains the teaching,

motivation, or suggestion in the prior art to select and combine the references. *In re Lee*, 61 USPQ2d 1430, 1433-1435 (Fed. Cir. 2002) (“The need for specificity pervades” the authority on this subject). The rejection cannot simply rely on “common knowledge and common sense” to make the combination, even where the combined references come from the same field of art. *In re Lee*, 61 USPQ2d 1430.

The Applicant respectfully submits that the Examiner has failed to point out any teaching, suggestion, or reason in the prior art for selecting and combining the nonlinear gap between to membrane halves 56, 58 of a horn activation feature of Sugiyama with the cover of Yamamoto. The Examiner’s assertion that the combination merely involves a “design choice” does not meet this standard. Office Action, p. 2. Not only has the Examiner failed to identify such a teaching in the prior art, but neither Yamamoto nor Sugiyama indicate that a seam “having a plurality of bends in consecutively alternating directions” should or could be included in a cover for a safety restraint device. *See* claims 1, 16, 21, and 24 (all independent claims) of the present application. The prior art fails to recognize the problems associated with revealing seams of a safety restraint device and thus provides no motivation to remedy this previously unrecognized problem.

D. Sugiyama Expressly Teaches Away From Use of a Nonlinear Seam in a Safety Restraint Device Cover

Teaching away from an applicant’s invention demonstrates a lack of prima facie obviousness. *McGinley v. Franklin Sports*, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001); *In re Fine*, 837 F.2d, 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). A reference teaches away from a claimed invention when the reference leads its reader “in a direction divergent from the path that was taken by the applicant.” *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 52 USPQ2d 1294, 1298 (Fed. Cir. 1999).

Sugiyama's use of the term "line" in the phrase easy-to-break line 38, 316 teaches away from use of a nonlinear seam. Col. 6, lines 39-44. Sugiyama could have chosen a number of different terms to describe the frangible portions of the cover, such as easy-to-break sections, portions, areas or the like. Instead, the term "line" was used, teaching that easy-to-break lines of Sugiyama are linear in shape and teaching away from the use of a nonlinear tear seam.

II. Rejection of Claims 2, 15, and 25

As stated, the Examiner has also rejected claims 2, 15, and 25 under 35 U.S.C. § 103(a) as unpatentable over Yamamoto in view of Sugiyama and Rheinlander. Rheinlander discloses an outer layer 20 with an interior layer 22 having a seam 30. However, as explained above, neither Yamamoto, Sugiyama, or Rheinlander teach a nonlinear seam having a plurality of bends in consecutively alternating directions. Thus, these patents simply cannot be combined to teach the nonlinear seam in the cover of the Applicant's invention. Therefore, the Examiner has likewise failed to establish a prima facie case of obviousness as to claims 2, 15, and 25.

In sum, Sugiyama does not teach a nonlinear seam, but teaches a nonlinear gap. Thus, Sugiyama and Yamamoto cannot be combined to teach the nonlinear seam having a plurality of bends in consecutively alternating directions on a cover, which is taught in the Applicant's invention. There is no teaching or motivation found in the prior art suggesting the combination of these elements. Also, combining the nonlinear gap of Sugiyama would render the cover of Yamamoto inoperable, thus teaching away from such a combination. In addition, Sugiyama's use of the term "easy-to-break line" further teaches away from use of a nonlinear seam.

Therefore, the Applicant respectfully requests allowance of claims 1-29. If the Examiner finds any remaining impediment to the prompt allowance of all claims, Applicant respectfully requests that the Examiner call the undersigned.

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Respectfully submitted,



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